

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
HENRY J. BRUEHER and)
GRAYS HARBOR COUNTY,)
Appellants,)
v.)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
Respondent.)

SHB No. 79-18

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the request for review of a substantial development permit issued with a conditional use by Grays Harbor County, but denied by DOE, came before the Shorelines Hearings Board, Chris Smith, Rod Kerslake, Robert Beaty and Chairman David Akana (presiding) at a hearing on July 6, 1979, in Lacey, Washington.

Appellant Brueher represented himself. Respondent was represented by Robert V. Jensen, Assistant Attorney General.

Having heard the testimony, having examined the exhibits, having considered the contentions of the parties, and Mr. Beaty having read

NEC/cwo

1 the partial transcript of the proceedings, the Shorelines Hearings
2 Board makes these:

3 FINDINGS OF FACT

4 I

5 Appellant Brueher owns approximately 18 acres of property bordering
6 East Wishkah Road north of Aberdeen in Grays Harbor County; a small
7 unnamed tributary stream of the Wishkah River flows through the property.
8 The property is undeveloped, covered with various trees, grasses, and
9 marsh vegetation. The water table is at the surface on part of the
10 property. The site is located in an area designated a rural environment
11 pursuant to the Grays Harbor County Shorelines Master Program. (SMP)

12 II

13 Sometime prior to January 8, 1979, appellant Brueher submitted
14 master application #78036 pursuant to the Environmental Coordination
15 Procedures Act (ECPA) (ch. 90.62 RCW), to the Department of Ecology (DOE)
16 for the proposed filling of lowlands with wood waste prior to light
17 logging activities and reforestation. The DOE, as ECPA coordinator, did
18 not indicate its position as to appellant's proposed development although
19 it had notice of it. Appellant interpreted this silence to mean that
20 DOE's approval of the conditional use permit was possible and consequently
21 worked diligently to comply with all requirements. After determining the
22 various permits required for the project, he obtained those necessary for
23 the project, including a substantial development permit with with a
24 conditional use, by Grays Harbor County. The Department of Ecology
25 then disapproved the permit.

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III

Appellant proposes to place fill on approximately 15 acres of land with 40-50,000 cubic yards of cedar spaults and sawdust to a maximum depth of three feet, at least fifty feet from the creek running through the property. The wood waste fill would enable the appellant to log the area with the necessary heavy equipment, and after covering the wood fill with soil, replant trees on the property.

IV

The Grays Harbor County SMP states that no new solid waste landfills which includes wood waste, should be permitted on shoreline areas. (Chapter 11) Wood waste fills are allowed in rural environments only as conditional uses (Chapter 21). The SMP indicates that a conditional use cannot cause "unreasonable adverse effects on the environment or other uses." (Chapter 33). The SMP also requires that landfills be designed and located to prevent significant damages to the environment and that materials in such landfills will not degrade water quality. (Chapter 2).

V

Unless wood waste landfills are totally isolated from water, they produce toxic leachates and contaminate the waters. The proposed project would place wood waste in direct contact with surface and ground waters, and would result in contamination of waters of the state. The proposed development does not provide for preventative measures to avoid such harmful effects on the environment.

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Board comes to these

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

CONCLUSIONS OF LAW

I

Substantial development permits are tested for consistency with the adopted and approved master program and the provisions of the Shoreline Management Act (SMA). RCW 90.58.140(2)(b). Further, a conditional use permit must meet the requirements of the SMP and WAC 173-14-140. The burden of proof in an appeal must be carried by the party challenging a decision in such a permit.

II

The proposed wood waste fill is inconsistent with the SMP (Chapters 2, 11, 21 and 33) and the SMA (RCW 90.58)¹, because the resultant pollution of state waters would result in an unreasonable adverse impact upon the environment.

III

Appellant has shown that he would be able to use the necessary heavy equipment to log the site if he were allowed to fill the site. However, he has not shown that the material he proposes to use, cedar waste, will not cause an unreasonable adverse effect upon the water quality. The appellant could use other material which would not endanger the water quality, to fill as little as was necessary for the purpose of logging. The conditional use criteria of the SMP have not

1. The policy of the SMA provides for protection against adverse effects to the waters of the State and their aquatic life. In the implementation of this policy, uses which are consistent with control of pollution and prevention of damage to the natural environment are preferred. Permitted uses must be designed and conducted in such a manner to minimize any resultant damage to the ecology and environment of the shoreline area. RCW 90.58.020.

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW

AND ORDER

1 been met (Chapter 33) because the proposed project would cause
2 unreasonable adverse effects on the environment.

3 IV

4 Under WAC 173-14-140(1), an applicant for a conditional use permit
5 must demonstrate that:

- 6 (a) The proposed use will be consistent with State
7 policies stated in the Shoreline Management Act
8 (RCW 90.58.020) and the policies of the Shoreline
9 Master Program;
- 10 (b) The proposed use will not interfere with the normal
11 public use of the public shorelines;
- 12 (c) The proposed use of the site and design of the project
13 will be compatible with other permitted uses within the
14 area;
- 15 (d) The proposed use will cause no unreasonable adverse
16 effects to the shoreline designation in which it is to
17 be located;
- 18 (e) The public interest suffers no substantial detrimental
19 effect.

20 Appellant has not shown that the proposed development is
21 consistent with the policies of the SMA or the SMP, that the
22 proposed project will cause no unreasonable adverse effects, and
23 that the public interest will suffer no substantial detrimental
24 effect. Additionally, appellant has not shown that the cumulative
25 effects of similar developments in similar circumstances would be
26 consistent with RCW 90.58.020 and would not produce substantial
27 adverse effects upon the shoreline environment. See WAC 173-14-140(3).

28 V

29 Appellant has failed to carry his burden of proof. Accordingly,
30 the decision of the Department of Ecology should be affirmed.

31 FINAL FINDINGS OF FACT,
32 CONCLUSIONS OF LAW
33 AND ORDER

1 Any Finding of Fact which should be deemed a Conclusion of Law
2 is hereby adopted as such

3 From these Conclusions the Board enters this

4 ORDER

5 The decision of the Department of Ecology in disapproving
6 the permit is affirmed

7 DATED this 25th day of June, 1979

8 SHORELINES HEARINGS BOARD

9 David Akana
10 DAVID AKANA, Chairman

11 Chris Smith
12 CHRIS SMITH, Member

13 Rodney Kerslake
14 RODNEY KERSLAKE, Member

15 Robert E. Beaty
16 ROBERT E. BEATY, Member

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26 FINAL FINDINGS OF FACT,
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